SYARIKAT TINGAN LUMBER SDN BHD

v.

TAKANG TIMBER SDN BHD

COURT OF APPEAL, KUALA LUMPUR
DENIS ONG JCA
PAJAN SINGH GILL JCA
HASHIM YUSOFF JCA
[CIVIL APPEAL NO: Q-02-786-01]
27 MARCH 2003

CIVIL PROCEDURE: *Appeal - Competency of appeal - Appeal from decision of registrar on inadmissibility of documents - Whether ruling appealable - Whether ruling fell within exclusionary clause of s. 3 Courts of Judicature Act 1964*

WORDS & PHRASES: *'decision' - Meaning of - Section 56 Rules of the High Court 1980 - Whether assigned same meaning as 'decision' defined under s. 3 Courts of Judicature Act 1964*

WORDS & PHRASES: *'judgment' and 'order' - Meaning of - Section 56 Rules of the High Court 1980 - Maxim noscitur a sociis - Whether applicable - Whether assigned same meaning as 'decision' defined under s. 3 Courts of Judicature Act 1964*

This was the appellant's appeal against the decision of the High Court judge who had upheld the preliminary objection of the respondent that the appellant's appeal against the ruling of the deputy registrar ('DR') was not competent. The DR had ruled on the inadmissibility of certain documents in the course of a hearing for assessment of damages.

The issues were: (1) whether the ruling of the DR on the inadmissibility of the documents was appealable in view of the amendment to the definition of "decision" under s. 3 of the Courts of Judicature Act 1964 ('CJA') by the Courts of Judicature (Amendment) Act 1998; and (2) whether the definition of the word "decision" under s. 3 CJA should also be assigned to the word "decision" under O. 56 r. 1 of the Rules of the High Court 1980 ('RHC').

Held:
Per Pajan Singh Gill JCA

[1] Even though the authorities speak of an appeal under O. 56 r. 1 RHC as proceedings by way of a rehearing, it still remains an appeal against a judgment, order or decision of the registrar of the High Court. The authorities only serve as a guideline to the judicial approach whilst hearing an appeal pursuant to O. 56 RHC. The fact remains that the legislature and the Rules Committee in their wisdom intended the powers exercised by a judge pursuant to O. 56 to be in his appellate capacity. (p 182 b-c)

[2] There is no definition of the following words "decision", "judgment" or "order" in the RHC. Section 4 CJA provides that the CJA shall prevail over any inconsistency or conflict between the CJA and any other written law other than the Federal Constitution. Therefore, it followed that the meaning of the word "decision" in s. 3 CJA should equally apply to the word "decision" in O. 56 RHC. Where the words "judgment" or "order" are concerned, the maxim "*noscitur a sociis*" was applicable and the same meaning should be given to those words as ascribed to the word "decision" in the CJA. (pp 182 d-h & 184 a)

[3] Any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose the rights of the parties does not constitute a 'decision' for the purpose of s. 3 CJA as amended. Equal weight should be attached to the entire sentence of s. 3 CJA as amended. What must be asked is not only whether a ruling does not dispose the final rights of the parties but also whether it was a ruling made in the course of a trial or hearing of any cause or matter. If it was not a ruling made in the course of a trial or hearing of any cause or matter, regardless of the fact that it did not dispose of the rights of the parties, it would be appealable. In the present case, the ruling by the DR on the admissibility of the documents, made in the course of a hearing, was a ruling on an issue other than the ultimate question and therefore fell within the exclusionary clause of s. 3 CJA. It followed that the ruling was not appealable and the High Court judge was correct in upholding the preliminary objection of the respondent that the appeal was not competent. (pp 184 e-h & 185 a-d)

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Ini adalah rayuan perayu terhadap keputusan hakim bicara Mahkamah Tinggi yang telah membenarkan bantahan permulaan responden bahawa rayuan perayu terhadap keputusan penolong pendaftar ('PP') adalah tidak kompeten. PP telah memutuskan atas ketidakbolehterimaan beberapa dokumen-dokumen tertentu dalam suatu perbicaraan pentaksiran ganti rugi.

Isu-isunya adalah: (1) sama ada keputusan PP atas ketidakbolehterimaan dokumen-dokumen boleh dirayui memandangkan pindaan kepada definisi "decision" di bawah s. 3 Akta Mahkamah Kehakiman 1964 ('AMK') oleh Akta Mahkamah Kehakiman (Pindaan) 1998; dan (2) sama ada definisi "decision" di bawah s. 3 tersebut terpakai kepada perkataan 'decision' di bawah A. 56 k. 1 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT').

Diputuskan:
Oleh Pajan Singh Gill HMR

[1] Walaupun autoriti-autoriti mengatakan rayuan di bawah A. 56 k. 1 KMT sebagai prosiding perbicaraan semula, ia masih merupakan rayuan terhadap penghakiman, perintah atau keputusan pendaftar Mahkamah Tinggi. Autoriti-autoriti hanya memberikan panduan pendekatan kehakiman mendengarkan rayuan selaras dengan A. 56 KMT. Badan perundangan dan jawatankuasa peraturan sebenarnya mengkehendakki hakim menjalankan kuasa-kuasa di bawah A. 56 KMT di dalam bidang kuasa rayuannya.

[2] Tidak terdapat definisi perkataan "decision", "judgment" atau "order" di bawah KMT. Seksyen 4 AMK memperuntukkan bahawa AMK mengatasi mana-mana undang-undang bertulis, selain daripada Perlembagaan Persekutuan, apabila terdapatnya ketidakseimbangan atau konflik dengan AMK dan undang-undang bertulis berkenaan. Dengan itu, makna "decision" di bawah s. 3 AMK patut terpakai kepada perkataan "decision" di bawah A. 56 KMT. Berkenaan makna "judgment" dan "order" pula, maxim *noscitur a sociis* terpakai dan makna sama juga patut diberikan seperti yang diberikan kepada perkataan "decision" di bawah AMK.

[3] Sebarang keputusan yang dibuat dalam perbicaraan atau pendengaran suatu kausa atau perkara yang tidak menyelesaikan hak-hak muktamad pihak-pihak berkenaan tidak merupakan "decision" di bawah s. 3 AMK. Penimbangan yang sama patut diberikan kepada keseluruhan ayat s. 3 AMK seperti yang dipinda. Apa yang mesti dipersoalkan bukan sahaja

sama ada keputusan itu tidak menyelesaikan hak-hak muktamad pihak-pihak berkenaan tetapi juga sama ada keputusan itu dibuat dalam perbicaraan atau pendengaran suatu kausa atau perkara. Jika keputusan tersebut tidak dibuat dalam perbicaraan atau pendengaran suatu kausa atau perkara, meskipun ia tidak menyelesaikan hak-hak muktamad pihak-pihak berkenaan, keputusan tersebut boleh dirayui kerana tidak terlingkung dalam fasal ketakmasukan s. 3 AMK. Di dalam kes semasa, keputusan PP atas ketidakbolehterimaan dokumen-dokumen tertentu dalam perbicaraan bukanlah atas isu yang muktamad dan seterusnya terlingkung dalam fasal ketakmasukan s. 3 AMK. Berikutannya, keputusan tersebut tidak boleh dirayui dan hakim bicara adalah betul apabila beliau membenarkan bantahan permulaan responden bahawa rayuan tidak kompeten.

Rayuan ditolak.]

Case(s) referred to:

Maleb Su v. PP [1984] 1 CLJ 378; [1984] 2 CLJ (Rep) 232 HC ***(refd)***

Seloga Jaya Sdn Bhd v. Pembinaan Keng Ting (Sabah) Sdn Bhd [1994] 2 CLJ 716 SC ***(refd)***

The State of Bombay v. Hospital Mazdoor Sabha AIR [1960] SC 610 ***(refd)***

Tuan Hj Ahmad Abdul Rahim v. Arab-Malaysia Finance [1996] 1 CLJ 241 FC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 4

Courts of Judicature (Amendment) Act 1998, s. 2

Rules of the High Court 1980, O. 56 r. 1

For the appellant - RR Sethu (Tan Thiam Teck & Dominic Lai); M/s Dominic Lai & Co

For the respondent - Mekanda Singh Sandhu; M/s Sandhu & Co

[Appeal from High Court, Miri; Civil Suit No: MR28/1986]

Reported by Usha Thiagarajah

JUDGMENT

Pajan Singh Gill JCA:

The appellant appeals against the decision of the learned judge of the High Court at Miri, who had dismissed the appellant's appeal against the ruling of the learned deputy registrar of the High Court, on an issue in regard to the admissibility of certain documents in the course of a hearing, for assessment of damages. The documents ruled inadmissible, were a re-amended statement of claim, notes of proceedings, and judgment, in respect

of Miri High Court Sivil Suit No. MR 26 of 1990. The learned deputy registrar had disallowed the admissibility of the abovementioned documents, after having heard submissions by counsel for both parties, following an objection by the counsel for the plaintiff.

On appeal before the learned judge, and before us, both counsel for the appellant/defendant, and respondent/plaintiff, argued on a preliminary issue, as to whether the appeal from the ruling by the deputy registrar in regard to the admissibility of the documents was competent, and properly brought before the learned judge, in view of the definition of the word "decision", under sub-s. 3 of the Courts of Judicature Act 1964 (hereinafter referred to as the Act). This definition came into force on 1 August 1998 *vide* s. 2 of the Courts of Judicature (Amendment) Act 1998.

It was also contended before us by the appellant's counsel, whether the appeal judge was correct in his interpretation of O. 56 r. 1 of the Rules of the High Court 1980. Counsel addressed the court as to the function of a judge hearing an appeal as a judge in chambers, from the decision of the deputy registrar of the High Court.

Appellant counsel also took the view that having regard to the nature, purpose, and function, of the appeal process under O. 56 r. 1 of the Rules of the High Court 1980, the application of the amended definition of the word "decision", pursuant to s. 3 of the Courts of Judicature Act (Amended) Act 1998, would militate against the spirit of O. 56 r. 1 of the RHC 1980. For the record, O. 56 r. 1 of the Rules of the High Court provides as follows:

(1) An appeal shall lie to a judge in chambers from any 'judgment', 'order' or 'decision' of the registrar.

It was also the appellant counsel's argument that the word "decision" in O. 56 r. 1 should not be ascribed with the meaning as provided in s. 3 of the Courts of Judicature Act (Amended) Act 1998, as it goes against the grain of authorities such as *Tuan Haji Ahmed Abdul Rahman v. Arab-Malaysia Finance* [1996] 1 CLJ 241, and *Seloga Jaya Sdn Bhd v. Pembinaan Keng Ting (Sabah) Sdn Bhd* [1994] 2 CLJ 716 which state that an appeal pursuant to O. 56 r. 1 proceeds by way of a rehearing, that is to say, the judge is to treat the case as if it was being heard for the first time by him. To subscribe to the meaning of "decision" as provided for in s. 3 of the amended Courts of Judicature Act 1964 to O. 56 Rules of the High Court would be incompatible with the ethos of the aforesaid judgments.

Shortly put, counsel contended, that there was no "decision" or "appeal" to speak of, in the context of O. 56 RHC 1980, and the judge was to treat the case as if it was being heard for the first time.

Interesting as this proposition is, we regrettably differ in our views as to the impact of an appeal under O. 56 RHC 1980. To this court, O. 56 r. 1 speaks of an appeal to begin with, and even though the authorities speak of the appeal as proceedings by way of a rehearing, it does not to our mind detract from the fact, that it still remains an appeal against a "judgment", "order", or "decision" of the registrar of the High Court. The authorities, we feel, only serve as a guideline to the peculiar judicial approach, whilst hearing an appeal pursuant to O. 56 of the RHC 1980. The fact remains to us, that the legislature, and the Rules Committee in their wisdom intended the powers exercised by a judge, pursuant to O. 56 to be in his appellate capacity. The matter is thus *cadit quaestio.*

As to whether the meaning "decision" in s. 3 of the Courts of Judicature Act 1964 as amended, should be ascribed to the word "decision" in O. 56 r. 1 RHC 1980, we see no reason why it should not. There is no definition of the word "decision" in the Rules of the High Court 1980, and similarly there is no definition of the words "judgment" or "order" in the said Rules of the High Court. The words "judgment" or "order" precede the word "decision" in O. 56 r. 1 RHC 1980.

In this context we should then avail ourselves of s. 4 of the Courts of Judicature Act which read as follows:

Provision to prevent conflict of laws

> 4. In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

We are thus fortified to hold, that the meaning of "decision" as provided for in s. 3 of the CJA as amended, should equally be ascribed to the word "decision" in O. 56 of the RHC 1980.

What then about the words "judgment" or "order", where, again, there is no definition of it, in the Rules of the High Court, and equally in the Courts of Judicature Act. To this we refer of course to the time honoured guidelines of contextual interpretation housed in the maxim of *"noscitur a sociis"* which was explained by Gajendragadkar J in the case of *The State of Bombay v. Hospital Mazdoor Sabha* at AIR [1960] SC 610 at p. 613 as follows:

> It is, however, contended that, in construing the definition, we must adopt the rule of construction *noscitur a sociis.* This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general.

The doctrine of associated words which take their meaning from one another was applied in the case of *Maleb bin Su v. Public Prosecutor* [1984] 1 CLJ 378; [1984] 2 CLJ (Rep) 232. The brief facts of this case are that there were two applications made by respective counsels at the commencement of a hearing at the Magistrate Court, and Sessions Court Seremban in that the President or Magistrate should disqualify himself from proceeding with the case on the grounds that he belonged to a service in which the Attorney-General is said to be the head of the service. Since the Attorney-General is also the Public Prosecutor, and has supervision and control of these judicial officers it was alleged that there was a likelihood of bias.

On appeal, the question of a right to appeal was considered by the learned judge, Hashim Yeop A. Sani FJ (as he then was), and he stated as follows:

> First, the question of the right to appeal. Under section 307(i) of the Criminal Procedure Code any person dissatisfied with any judgment, sentence or order pronounced by the Magistrate in a criminal case may appeal to the High Court against any such judgment, sentence or order. There is no argument, in my opinion, that the *ejusdem generis* rule applies to the word "order" which is preceded by the words "judgment" and "sentence". The order must therefore be a final order in the sense that it is final in the effect as in the case of a judgment or a sentence. The test for determining the finality of an order is to see whether the judgment or order finally disposes of the rights of the parties. See discussion of this point in *Mohammad Amin Bros, v. The Dominion of India*. The order which finally disposes of the rights of the parties should be distinguished from a purely procedural ruling. See also *Public Prosecutor v. Hoo Cheng Chwen* and *Public Prosecutor v. R.K. Menon & Anor.* In the former case Rose CJ of Singapore dealt with an appeal on the admissibility of certain statements and the learned judge held that the ruling of the Magistrate was a procedural ruling and therefore not an appealable order. In the latter case Ajaib J also correctly took the view that a ruling on non-compliance with section 129(i)(b) of the Criminal Procedure Code was a procedural and non-appealable ruling.

Bearing this in mind, we are thus sanguine enough to hold that the words "judgment" or "order", should take their colour as it were, from the meaning, assigned to the word "decision", in the Courts of Judicature Act, as amended.

And now to the issue at hand. Was the ruling of the learned deputy registrar on the issue of admissibility of document an appealable ruling?

In this context a curial examination of s. 3 of the CJA as amended is required. Section 3 of the CJA as amended defines the word "decision" as follows:

> "Decision" means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of parties.

Counsel for the respondent and appellant took us on a lengthy discourse of the nuances between a "decision" which is a final order, and a "decision" as an interlocutory order, each holding their respective differing views, on whether the admissibility of the said documents was a final, and interlocutory order.

On hindsight, we feel that this entire exercise on the interpretation of the meaning of a final order, and an interlocutory order was needless, and the case law that was tendered irrelevant. This is simply because one needs to merely look at the cold print of s. 3 CJA as amended, to see that any ruling made in the course of a trial or hearing of any cause and matter, which does not finally dispose the rights of the parties, does not constitute a decision for the purpose of s. 3 CJA, as amended. This is the stark reality of s. 3 CJA as amended. It is simply, and lucidly stated leaving no room for doubt in its application. The intention of the legislature when drafting the amendment was that, the amendment should serve as a filter process for appeals.

What we feel, however, must be emphasised, with equal force when scrutinising s. 3 CJA as amended, is that, the said ruling must be made in the course of a trial, or hearing. Much emphasis, we feel, is placed on the latter part of the sentence *viz-a-viz* "... does not finally dispose of the rights of the parties", thus overlooking the fact that the ruling must be made in the course of a trial or hearing of any cause or matter. Counsel we found appeared to be preoccupied with the determination of whether the ruling disposes the rights of the parties, but paid scant regard to the fact as to at what juncture the said ruling was made.

Equal weight should be attached to the entire sentence of s. 3 CJA as amended, for what must be asked, is not only whether a ruling does not dispose the final rights of the parties but also the question whether it was a ruling made in the course of a trial or hearing, of any cause or matter. If it was not a ruling made in the course of a trial or matter, regardless of the fact that it did not dispose of the rights of the parties, it may not be excluded by the definition of "decision" as provided in s. 3 of the CJA as amended, and is therefore appealable.

To answer to the question posed earlier on, the ruling by the learned deputy registrar on the admissibility of the documents, made in the course of a hearing, was with equanimity, we say, a ruling on an issue other than the ultimate question, and is thus excluded by the exclusion clause in the definition of "decision" in s. 3 of the CJA as amended.

Suffice to say, the said ruling was not appealable, pursuant to the current version of s. 3 and to that end the High Court judge was correct in upholding the preliminary objection of the respondent's counsel, that the said appeal was not competent.

For the above-mentioned reasons the appeal is dismissed with costs. Deposit to the respondent towards account of taxed costs.